

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

Plaintiffs,

v.

ESTATE OF HERBERT S. McDUFFEE,
JR., DECEASED, et al.,

Defendants.

Case No.: CIV. 02-0018 GEB GGH

Order on Settlement Conference Held on
May 29, 2009

AND RELATED CROSS-CLAIMS,
COUNTERCLAIMS, THIRD-PARTY
CLAIMS

A settlement conference was held on May 29, 2009 with all non-fully dismissed parties, their counsel and insurance representatives and representatives of the Department of Toxic Substances Control ("DTSC") and their counsel, with Magistrate Judge Gregory G. Hollows presiding.

The following agreement was reached, subject to a 30 day time period (ending on June 29, 2009) for any party to inform Magistrate Judge Hollows by email that it does not have the authority to agree as follows, and subject to documentation of the agreement in a mutually acceptable settlement agreement:

1. The sum of \$1,771,000 will be paid to Plaintiff DTSC by the settling arrangers consisting of the following parties:

| Settling Arrangers Group | Share: \$77,000 |
|---|------------------------|
| Aerojet | 1 |
| Altantic Richfield | 1 |
| Andrews Enterprises | 1 |
| California Highway Patrol/Cal Trans/State Garage ("State Agencies") | 2* |
| Chevron | 1 |
| City of Roseville | 1 |
| City of Sacramento | 1 |
| County of Sacramento | 1 |
| Ellsworth Harrold | 1 |
| Exxon Mobil | 1 |
| FB Hart | 1 |
| International Truck | 1 |
| Petroleum Tank Line | 1 |
| PG&E | 1 |
| Shell Oil | 1 |
| SMUD | 1 |
| Suburban Motors | 1 |
| Teichert, Inc. | 1 |
| Texaco | 1 |
| Unocal | 1 |
| Union Pacific Railroad | 1 |
| United States Air Force | 1 |

* The State Agencies' payment includes a .5 share to DTSC for administrative costs in the preparation of settlement documentation, including responding to motions.

2. The sum of \$585,000 will be paid to Plaintiff DTSC by the settling property owners group as follows:

| | |
|---|-----------|
| Estate of McDuffee/Christine McDuffee | \$45,000 |
| Mid-Valley Development (Parcel C) | \$140,000 |
| White Rock & Kilgore, LLC/Ravind Shankar (Parcel A) | \$400,000 |

3. The following parties are not participating in the settlement ("non-settling parties"):

| <u>Property Owners</u> | <u>Arrangers</u> |
|---------------------------|------------------|
| Charles Kester (Parcel B) | Future Nissan |
| Sharon Stone (Parcel B) | Keil Enterprises |
| | Maita Oldsmobile |
| | RL Niello |
| | John L. Sullivan |
| | Turner Motors |
| | Valley Livestock |

1 4. The general terms of the settlement are set forth below. The oversight committee will
2 take the lead in preparing a global settlement agreement for the settling arrangers, the
3 McDuffee parties and the settling property owners. The oversight committee will also
4 take the lead in the preparation of a motion for good faith settlement determination and
5 an order confirming a contribution bar under CERCLA. If the settling parties have not
6 reached agreement on a settlement agreement by July 29, 2009, then all counsel, and
7 parties and insurance representatives, will appear for a further settlement conference on
8 August 28, 2009 at 10:00 a.m.

9 General Terms:

- 10 a. DTSC will undertake all future assessment, remediation and monitoring work
11 (“Work”) in a timely manner so as not to unduly inhibit development at the
12 Brighton Oil site (“Site”);
- 13 b. DTSC will provide a full release and covenant not to sue to the settling arrangers
14 and the McDuffee parties with no re-openers;
- 15 c. DTSC will provide a release and covenant not to sue to the settling property
16 owners with limited re-openers;
- 17 d. If the cost of the excavation remedy selected in the April 13, 2009 Remedial
18 Action Plan Work exceeds the amount of funds from the settlement, DTSC retains
19 the sole discretion to determine if an alternative remedy, such as a capping
20 remedy, will be utilized.;
- 21 e. The settling property owners agree to record a land use covenant (that will be
22 attached to the Settlement Agreement) that 1) restricts use of areas of the Site that
23 do not meet unrestricted land use criteria, 2) prohibits any excavation,
24 construction or placement of structures in those areas without DTSC
25 authorization, and 3) requires management of residual chemical constituents in
26 those areas in a manner approved by DTSC. DTSC agrees that it will work with
27 the owner of Parcel A to place a line on the parcel map showing where
28 development can occur at the time of settlement;

- 1 f. Except for the obligations imposed by the final settlement agreement to be
2 executed by DTSC and the settling parties in this case, the settling parties agree
3 not to assert any claims or causes of action against DTSC, the State of California,
4 or any state agency (collectively “the State”) for costs, damages or injuries, as a
5 result of DTSC’s response actions or lack of response actions at the Site; and
6 agree not to assert any claims seeking to require the State to carry out any
7 response actions at the Site. This agreement will be made binding on future
8 property owners;
- 9 g. DTSC and the State of California shall be included in the provision granting
10 contribution protection; with the statement that contribution protection granted by
11 DTSC is subject to DTSC’s reservation of rights against property owners that was
12 previously discussed;
- 13 h. DTSC has advised the Court that any of the non-settling arranger parties may “opt
14 in” to the settlement on the same terms set forth in this order for the settling
15 arrangers by agreeing to pay the sum of \$77,000. This “opt in” option will remain
16 open with DTSC until June 29, 2009;
- 17 i. DTSC will not waive past oversight costs, attorneys’ fees and any other
18 recoverable costs, against the non-settling property owner party and the non-
19 settling arranger parties who do not opt in as set forth in (h) above;
- 20 j. DTSC reserves the right to pursue all available remedies against the non-settling
21 property owner party and the non-settling arranger parties except for those
22 arranger parties who opt in as set forth in (h) above;
- 23 k. The settlement is contingent upon confirmation by the United States District
24 Court for the Eastern District of California in an order finding this settlement to
25 be entered into in good faith under Section 877.6 of the California Code of Civil
26 Procedure and barring any claims for contribution against the settling parties
27 under Section 877.6 of the California Code of Civil Procedure and Section
28 113(f)(2) of CERCLA, 42 U.S.C. Section 9613(f)(2);

1. A status conference date will be scheduled by Judge Garland E. Burrell, Jr. with DTSC and the non-settling parties after the hearing is held on the settling parties' motion for a good faith finding and for a contribution bar.

DATED: June 4, 2009

/s/ Gregory G. Hollows

GREGORY G. HOLLOWS
UNITED STATES MAGISTRATE JUDGE